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April 7, 1994

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

94-11

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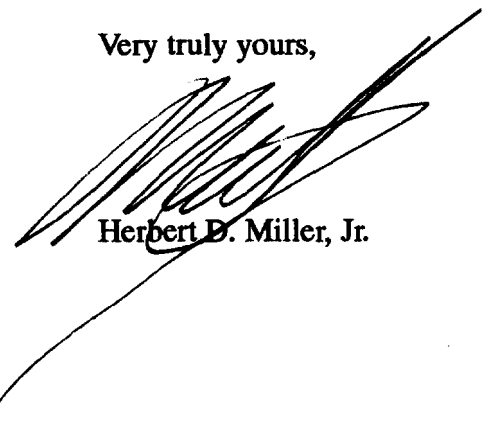
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Mr. Caton:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc., United States Cellular Corporation, and Wisconsin RSA #8, Inc., is their Supplement to Wisconsin RSA#8, Inc's Motion for Leave to Intervene in CC Docket Number 94-11.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Herbert D. Miller, Jr.

enc.

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

IN RE APPLICATION OF

TELEPHONE AND DATA SYSTEMS, INC.

For facilities in the Domestic Public  
Cellular Telecommunications Service  
on Frequency Block B in Market 715,  
Wisconsin 8 (Vernon) Rural Service  
Area

CC Docket Number  
94-11

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

TO: Honorable Joseph P. Gonzalez  
Administrative Law Judge

**SUPPLEMENT TO MOTION FOR LEAVE TO INTERVENE**

Telephone and Data Systems, Inc. ("TDS"), United States Cellular Corporation ("USCC"), and Wisconsin RSA #8, Inc. file herewith, by their attorneys, their Supplement to Wisconsin RSA #8, Inc's Motion for Leave to Intervene, as directed by the Presiding Administrative Law Judge's *Order* (FCC 94M-210) released on March 31, 1994.

At the prehearing conference on March 15, 1994, undersigned counsel noted the existence of an apparent oversight in the *Hearing Designation Order*, which failed to reflect the assignment of the Wisconsin RSA #8 license from TDS to Wisconsin RSA #8, Inc., and the transfer of control of Wisconsin RSA #8, Inc. to a subsidiary of USCC. Counsel stated an intention to file a corrective motion, and the Presiding Administrative Law Judge expressed the view that "I think it would certainly be helpful." (Tr. 19 - 20)

The Wisconsin RSA #8, Inc. Motion for Leave to Intervene and the TDS/USCC Motion for Modification of Issues and Caption (the "Motions"), were filed merely so that the record could reflect the correct identity of the permittee of the authorization for the Wisconsin 8 RSA prior to the issuance of the *HDO*. Simply, the *HDO* did not reflect the fact that, pursuant to prior Commission consent, the authorization at issue in this proceeding had been assigned from TDS to Wisconsin RSA #8, Inc., now a subsidiary of USCC. The Motions were not intended to have any substantive impact on this proceeding but to reflect the fact that Wisconsin RSA #8, Inc. held the Wisconsin 8 RSA authorization at the time of its recision and will hold the Wisconsin 8 RSA authorization at the time the qualifications of TDS and USCC are affirmed in this proceeding. Wisconsin RSA #8, Inc. has no intention of participating in any manner separate and/or distinct from USCC, of being represented separately from USCC, or of filing motions, including proposed findings of fact and conclusion, separately from USCC.

TDS has not sought to withdraw from this proceeding, and the Motions were not intended "as a mechanism for the withdrawal of TDS as a party to this proceeding" (Bureau Comments, p. 2). TDS remains the parent of USCC<sup>1</sup>, and USCC is the parent of Wisconsin RSA #8, Inc. Whatever the implications for TDS ultimately may be of an adjudication here concerning the misconduct alleged against USCC, those implications would not be changed in the slightest by virtue of the intervention of Wisconsin RSA #8, Inc. or by virtue of the requested modification of the *Hearing Designation Order* caption and issues.

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<sup>1</sup> TDS owns approximately 83% of the stock of USCC. The stock of both companies is traded on the American Stock Exchange.

We understand the Bureau's statements that "this proceeding involves more than a narrow determination whether a TDS subsidiary has the requisite qualifications to hold the authorization in the Wisconsin 8 market" to mean that USCC's character qualifications are in issue here based on an alleged possible lack of candor during the *La Star* hearing, and that because USCC is owned 83 percent by TDS, TDS's possible involvement in any alleged misconduct also places TDS's character qualifications in question.<sup>2</sup> Should the outcome of the hearing be adverse to USCC or TDS, the Presiding Administrative Law Judge has the authority under the *Wisconsin 8 HDO* to impose a forfeiture and/or to deny the Wisconsin RSA 8 application. As indicated above, the requested modification of the issues and of the caption would not affect that authority in any way.

Nevertheless, it also is clear that the Commission in the *Wisconsin 8 HDO* did not intend for the Presiding Administrative Law Judge to take action with respect to any authorization other than Wisconsin RSA 8; no other authorizations are before him. What the Commission may subsequently do with respect to pending applications in other markets, conditioned grants in other markets, or unconditioned grants in other markets based upon findings and conclusions here is not before the

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<sup>2</sup> As framed, the issues are:

"(1) To determine whether United States Cellular Corporation misrepresented facts to the Commission, lacked candor in its dealings with the Commission, or attempted to mislead the Commission, and, in this regard, whether United States Cellular Corporation has violated Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17.

(2) To determine, based on the evidence adduced in issue 1, above, whether Telephone and Data Systems, Inc. possesses the requisite character qualifications to hold the cellular Block B authorization for the Wisconsin 8 (Vernon) Rural Service Area and, accordingly, whether grant of its application would serve the public interest, convenience, and necessity." (*Wisconsin 8 HDO*, ¶ 44).

Presiding Administrative Law Judge. Those matters will not arise unless there is an adverse determination here; even in the event of an adverse determination in this proceeding, they will not arise **here**, and cannot be resolved **here**, because they are far beyond the mandate given to the Presiding Administrative Law Judge by the *Wisconsin 8 HDO*.

Moreover, the Bureau clearly does not intend that the scope of the present issue extends beyond the conduct in the *La Star* proceeding. The Bureau has previously taken the position, with which the Presiding Administrative Law Judge agreed, that conduct in the *La Star* proceeding is **all** that is at issue:

"The instant proceeding is only to determine whether USCC misrepresented facts, lacked candor, or attempted to mislead the Commission in the La Star proceeding." (Common Carrier Bureau Comments in Support of Portland Cellular Partnership's Petition to Intervene, p. 3).

By an *Order* granting a petition to intervene in this proceeding filed by Portland Cellular Partnership (FCC 94M-190, released on March 25, 1994), the Presiding Administrative Law Judge held:

"Port Cell is advised, however, that its participation in this proceeding will be limited to an examination of the conduct of USCC in the La Star proceeding. Its alleged 'knowledge' of USCC's conduct in other, 'similar' proceedings, which it appears to find relevant to the matter at hand, and, apparently, would offer in evidence at the hearing will not be considered." (FCC 94M-190, p. 2).

We assume that the Bureau adheres to this position, and that by stating that the present "inquiry reaches beyond the Wisconsin 8 market" (Bureau Comments on Motion for Modification of Issues and Caption, pp. 3 - 4) the Bureau does not mean to advance a different position.

The request for issue and caption modification, and for leave for Wisconsin RSA #8, Inc. to intervene, were, as noted above, intended only to indicate the actual

permittee of the subject authorization prior to the issuance of the *HDO*. Aside from the factual accuracy of the history of the Wisconsin 8 RSA authorization, the Motions are intended to be of no substantive consequence to this proceeding. If the issues and caption are modified to reflect Wisconsin RSA #8, Inc. as the applicant, it seems sensible to have Wisconsin RSA #8, Inc. as a formal party to the proceeding; otherwise, it is a matter of no consequence.<sup>3</sup>

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<sup>3</sup> By virtue of the common nature of the matters presented by the Bureau's comments on the intervention matter and on the requested issue and caption modification, we have attempted to respond to all concerns here. We do not contemplate filing a separate response with respect to the requested issue and caption modification matters, and ask that this pleading be considered as responding to both.

We disagree with the Bureau's suggested modification of the issue, which would expand the inquiry to determine whether, in light of the evidence adduced under issue 1, TDS "or any of its subsidiaries" possess the requisite character qualifications for grant of the Wisconsin RSA 8 application. Only one TDS subsidiary, Wisconsin RSA #8, Inc., was the Wisconsin RSA 8 licensee; TDS has numerous other subsidiaries, the qualifications of which are not before the Presiding Administrative Law Judge for any purpose and which are not parties to this hearing. Some are wholly owned subsidiaries, some are not. If the formulation of the issue suggested by the Bureau is intended to require TDS and USCC to establish the lack of connection between each of those subsidiaries and the La Star case, and to invite inquiry by adverse parties into that lack of connection, it would expand the scope of the hearing far beyond what the *Wisconsin 8 HDO* contemplates, all to no useful purpose.

APRIL 7, 1994  
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Respectfully submitted,  
TELEPHONE AND DATA SYSTEMS, INC.  
UNITED STATES CELLULAR CORPORATION  
WISCONSIN RSA #8, INC.

By /s/ Alan Y. Naftalin  
Alan Y. Naftalin

By /s/ Herbert D. Miller, Jr.  
Herbert D. Miller, Jr.

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/s/ Mark D. Schneider  
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*Their attorneys*

April 7, 1994

## Certificate of Service

I, Richard Massie, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by First Class United States Mail, postage prepaid:

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\* By hand

/s/   
Richard Massie  
April 7, 1994